



## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2020-0064; Notice 1]

#### Mercedes-Benz USA, LLC, Receipt of Petition for Decision of Inconsequential

#### Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Mercedes-Benz AG and Mercedes-Benz USA, LLC, (collectively, “Mercedes-Benz”) have determined that certain model year (MY) 2020 Mercedes-Benz GLS 580 motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 118, *Power-operated Window, Partition, and Roof Panel Systems*. Mercedes-Benz filed a noncompliance report dated May 11, 2020, and subsequently petitioned NHTSA on June 3, 2020, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Mercedes-Benz’s petition.

**DATES:** Send comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- Mail: Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

- Hand Delivery: Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except for Federal holidays.
- Electronically: Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also

be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a Federal Register notice published on April 11, 2000 (65 FR 19477-78).

## **SUPPLEMENTARY INFORMATION:**

### **I. Overview:**

Mercedes-Benz has determined that certain MY 2020 Mercedes-Benz GLS 580 motor vehicles do not fully comply with the requirements of paragraph S6(a)(1) of FMVSS No. 118, *Power-operated Window, Partition, and Roof Panel Systems* (49 CFR 571.118). Mercedes-Benz filed a noncompliance report dated May 11, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Mercedes-Benz subsequently petitioned NHTSA on June 3, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Mercedes-Benz's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

### **II. Vehicles Involved:**

Approximately 22 MY 2020 Mercedes-Benz GLS 580 motor vehicles manufactured between February 8, 2019, and September 20, 2019, are potentially involved.

### **III. Noncompliance:**

Mercedes-Benz explains that the noncompliance is that the automatic reversal systems and actuation devices for the sunroofs in the subject vehicles do not fully comply with paragraph S6(a)(1) of FMVSS No. 118. Specifically, when the vehicle's "car wash mode" is activated by using the central touch display in the center console, the sunroof may close automatically.

#### **IV. Rule Requirements:**

Paragraph S6(a)(1) of FMVSS No. 118 includes the requirements relevant to this petition. An actuation device must not cause a window, partition, or roof panel to begin to close from any open position when tested using a stainless steel sphere having a surface finish between 8 and 4 micro inches and a radius of  $20\text{ mm} \pm 0.2\text{ mm}$ , place the surface of the sphere against any portion of the actuation device.

#### **V. Summary of Mercedes-Benz's Petition:**

The following views and arguments presented in this section, "V. Summary of Mercedes-Benz's Petition," are the views and arguments provided by Mercedes-Benz. They have not been evaluated by the Agency and do not reflect the views of the Agency. Mercedes-Benz describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Mercedes-Benz submitted the following reasoning:

1. FMVSS No. 118 is intended to reduce the likelihood of injuries that may arise due to the accidental operation of power-operated windows, sunroofs, and other moveable partitions. The particular provision at issue here, S6(a), is focused on preventing the inadvertent movement of powered windows, partitions, and roof panels if a child inadvertently leans on or against the actuation device. The provisions were intended to simulate a child's knee pressing against the actuation device at a particular level of

force to ensure that it does not close. By its terms, the standard applies to vertically mounted switches, including those located in the vehicle's console or central touch display as in this case.

2. Due to their specific operating parameters, even though the buttons used to activate car wash mode do not meet the performance requirement of paragraph S6(a), the condition does not create an increased safety risk. As an initial matter, the car wash mode feature must first be activated by the user. Car wash mode is not automatically enabled unless and until the operator activates the feature by affirmatively accepting the option and turning the feature on. Thus, unless car wash mode is already active within the vehicle, the condition described above cannot occur.
3. Once the vehicle has initialized car wash mode, the feature can only be activated through a series of steps using either the vehicle's central touch display or from a touchpad located in the center console. Activating car wash mode is a multi-step process and the process varies depending on the current menu contained on the display screen. For example, if car wash mode has been programmed by the user inside the "favorites" menu, then a series of two touches is needed to activate car wash mode. In all other cases, the operator would first need to change the display screen to the vehicle menu first and from there, navigate to the car wash mode icon. In either case, car wash mode will not become active unless each of these steps is executed in the corresponding order. Because of the complexity involved in navigating through the required sequence of events there is an extremely low likelihood of the car wash mode being inadvertently activated in the first place.

4. Further, the sunroofs in the subject vehicles contain an auto-reverse feature. Upon detecting an object or obstruction inside the sunroof, it will automatically stop and reverse course and fully retract. While the sunroofs do not meet the requirements of paragraph S5, they are certified to the European standard UN-R-21. The European standard incorporates many of the performance features included in the automatic reversal function contained in FMVSS No. 118, paragraph S5. The sunroofs in the subject vehicles will automatically reverse prior to exerting 100 Newtons of pinch force, and consistent with the options provided at paragraph S5.2, the sunroof will either retract to a position at least as wide as the initial position before closing or will allow a 200-mm rod to be inserted in the gap.
5. The Agency has previously granted petitions for inconsequential treatment for FMVSS No. 118 involving similar circumstances and vehicle features. NHTSA granted a petition by General Motors involving a noncompliance with FMVSS No. 118, paragraph S4(e), where for 60 seconds after the vehicles are started, an issue with the sunroof module would allow the sunroof to close via the control button if the engine is turned off and a front door is opened. In that instance, in order to activate the sunroof, a series of specific steps must be taken in order and the steps must be completed within a 60-second time frame. *See Decision Granting Petition for Inconsequential Noncompliance by General Motors 73 FR 22459 (April 25, 2008).* In granting the petition, the Agency found that the potential for entrapment in a power operated sunroof presented less of a risk of entrapment than power-operated windows because, in general, sunroofs are less physically accessible than power-operated windows. The decision also focused on the presence of an auto-reverse feature,

which would reverse the movement of the sunroof before it exerted a pressure of 100 Newtons. In granting the motion, the Agency noted the presence of this auto-reverse feature as one that would further reduce the risk of entrapment.

6. Much like the conditions present in the General Motors vehicles, the noncompliance in the car wash mode feature of the subject vehicles similarly does not create an increased safety risk. Assuming that the function has been initialized by the operator, a series of specific and coordinated steps must occur in order to activate car wash mode. If those steps are not carried out in the precise order required, then the car wash mode program will not be activated. Even in the unlikely event that the car wash mode function is inadvertently activated, there is no enhanced risk of injury because of the sunroof auto-reverse feature.

Mercedes-Benz concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate

commerce of the noncompliant vehicles under their control after Mercedes-Benz notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

**Billing Code 4910-59-P**

[FR Doc. 2020-23512 Filed: 10/22/2020 8:45 am; Publication Date: 10/23/2020]